Ling Soon Ting @ Ling Soon Bing v Superintendent of Lands and Surveys

HIGH COURT (KUCHING) — LAND REFERENCE NO KCH-15–4 OF 2011
RHODZARIAH BUJANG J
9 OCTOBER 2012

Land Law — Compulsory acquisition — Compensation payable — Objection to compensation sum awarded — Matters which can be considered in determining compensation payable for acquisition of land — Increase of compensation to take into account existing planning approval for subject land — Whether fees and expenses for subdivision of subject land can be claimed — Whether compensation paid to intended developer of subject land can be claimed — Whether cost of engaging valuer for trial can be claimed — Sarawak Land Code ss 48 & 60

The objector's land was compulsorily acquired by the State Government of Sarawak vide *Gazette* Notification issued under s 48 of the Sarawak Land Code ('Land Code'). The objector had intended to develop the land into a housing estate and had obtained approval from the state planning authority in 2006 to construct 24 units of dwelling houses. The respondent gave the objector a compensation of RM57 per square meter amounting to RM707,805. She was also given compensation of RM1,034 for the crops in the land. The objector filed this action to challenge the compensation. The objector also claimed an additional amount of RM11,111.60 being fees and expenses in relation to the approval for AVTC/subdivision of land and RM250,000 being the compensation paid to the developer who signed the agreement to develop the land into a housing estate.

Held:

(1) Since there was an existing planning approval for the subject land at the time of acquisition, the value should be 5% to 10% higher. Hence, the market value of the subject land should be RM75 per square meter when the planning approval was factored into the market value. Hence, the total compensation to be awarded to the respondent was revised to RM930,375 (see para 7).

(2) Section 60 of the Land Code provides for matters which the court shall take into consideration in determining the compensation payable for acquisition of land by the government and no others. These matters are spelled out in sub-s (1)(a)-(f). The court was tied by the legal provisions not to consider any other matters. The other fees, expenses and

compensation claimed by the objector could not be pigeon-holed into any of the provisions listed in the said sub-s 1(a)-(f) (see para 9).

(3) The state planning authority's planning approval which was taken into account to increase the award of compensation came under s 60(1)(a) (see para 11).

(4) The compensation to the developer also could not be allowed because evidence of the payment was not adduced at the trial. The court attached very little weight to the development agreement exhibited at the trial because it was not prepared by a lawyer (see para 12).

(5) The cost of engaging the valuer being part of the cost of the trial could not be allowed under s 67(a)(c) of the Land Code (see para 14).

(6) As for cost of action, since the award had been increased by more than 20%, under s 67(c) of the Land Code, cost was not awarded to the applicant (see para 15).

[Bahasa Malaysia summary

Tanah pembantah telah diperoleh sepenuhnya oleh Kerajaan Negeri Sarawak melalui Pemberitahuan Warta yang dikeluarkan di bawah s 48 Kanun Tanah Sarawak ('Kanun Tanah'). Pembantah berhasrat untuk memajukan tanah itu menjadi taman perumahan dan telah mendapat kelulusan daripada pihak berkuasa perancangan negeri pada tahun 2006 untuk membina 24 unit rumah kediaman. Responden telah memberi kepada pembantah pampasan RM57 meter persegi berjumlah RM707,805. Dia juga telah diberi pampasan RM1,034 untuk tanaman atas tanah itu. Pembantah telah memfailkan tindakan ini untuk mencabar pampasan itu. Pembantah juga menuntut jumlah tambahan RM11,111.60 sebagai fee dan perbelanjaan berkaitan kelulusan untuk AVTC/pembahagian tanah itu dan RM250,000 sebagai pampasan yang telah dibayar kepada pemaju yang telah menandatangani perjanjian untuk memajukan tanah itu kepada taman perumahan.

Diputuskan:

(1) Oleh kerana terdapat kelulusan perancangan yang sedia ada untuk tanah tersebut pada masa pemerolehan, nilainya patut lebih tinggi sebanyak 5% hingga 10%. Justeru itu, nilai pasaran untuk tanah tersebut sepatutnya RM75 meter persegi apabila kelulusan perancangan itu diambil kira ke dalam nilai pasaran. Oleh itu, keseluruhan pampasan yang patut diawardkan kepada responden telah disemak semula kepada RM930,375 (lihat perenggan 7).

(2) Seksyen 60 Kanun Tanah memperuntukkan untuk perkara-perkara yang mana telah dipertimbangkan oleh mahkamah dalam menentukan pampasan yang perlu dibayar untuk pemerolehan tanah oleh kerajaan dan tiada yang lain. Perkara-perkara tersebut dinyatakan dalam sub-s

(1)(a)-(f). Mahkamah terikat dengan peruntukan perundangan untuk tidak mengambil kira apa-apa perkara lain. Fee, perbelanjaan dan pampasan lain yang dituntut oleh pembantah tidak boleh dimasukkan ke dalam mana-mana peruntukan yang dinyatakan dalam sub-s (1)(a)-(f) tersebut (lihat perenggan 9).

(3) Kelulusan perancangan pihak berkuasa perancangan negeri yang telah diambil kira untuk meningkatkan award pampasan terangkum di bawah s 60(1)(a) (lihat perenggan 11).

(4) Pampasan kepada pemaju juga tidak dibenarkan kerana keterangan pembayaran tidak dikemukakan semasa perbicaraan. Mahkamah tidak memberi penekanan kepada perjanjian pembangunan yang diekshibitkan semasa perbicaraan kerana ia tidak disediakan oleh peguam (lihat perenggan 12).

(5) Kos melantik penilai yang merupakan sebahagian daripada kos perbicaraan tidak boleh dibenarkan di bawah s 67(a)(c) Kanun Tanah (lihat perenggan 14).

(6) Berhubung kos tindakan, oleh kerana award telah dinaikkan lebih daripada 20%, di bawah s 67(c) Kanun Tanah, kos tersebut tidak diawardkan kepada pemohon (lihat perenggan 15).]

Notes

For a case on compensation payable, see 8(2) *Mallal's Digest* (4th Ed, 2011 Reissue) para 2885.

Cases referred to

Superintendent of Lands and Surveys Sarawak v Aik Hoe & Co Ltd [1966] 1 MLJ 243, FC (refd)

Legislation referred to

Sarawak Land Code (Cap 81) ss 48, 60, 60(1)(a), (f), 67(a), (c), 69

Anne Teo (Lim & Teo Advocates) for the objector.
See Chee How (Baru Bian Advocates & Solicitors) for the objector.
Marjanah bt Adenan (State Legal Officer, Attorney General's Chambers) for the respondent.

Rhodzariah Bujang J:

[1] For the purpose of constructing a Health Clinic in Matang, Kuching, Lot 799, Block 5 Matang Land District was compulsorily acquired by the State Government of Sarawak vide *Gazette* Notification No 1687 dated 31 May 2007 which was issued under s 48 of the Sarawak Land Code. The land is

1.2405 hectares and L-shaped with a title which is due to expire only on 31 December 2029. Its registered owner, Madam Ling Soon Ting @ Ling Soon Bing ('the objector') had big plans for the land. She wanted to develop it into a housing estate and had in fact obtained approval from the state planning authority on 20 February 2006 to develop the same into 24 units of dwelling houses. She has granted a power of attorney to her husband, Mr Lu Yew Hee at the same time when she transferred the land to herself from its original owner, her deceased mother. (The objector is the administratrix of the estate of her mother.) When the superintendent of lands and surveys ('the respondent') acquired the land she was given a compensation of RM57 per square metres which works out to RM707,805. In addition, she was given compensation of RM1,034 for the crops in the land. Being dissatisfied with the award, the objector has filed this action to challenge the land compensation.

[2] At the trial of the action, the objector and respondent each called a valuer to present their case, whilst I was assisted by two registered valuers myself, Mr Khalid bin Abdul Mutalib, the District Valuer with the Department of Valuation and Property Services, Kuching and Mr Alex Ting of Messrs A Ting & Associates, Kuching.

[3] Both assessors in their written opinions given to me at the conclusion of the trial were in agreement that the valuation of the respondent of RM57 per square metres for the subject land is much too low and does not represent the market value of the land at the time of acquisition.

MARKET VALUE

[4] The Federal Court in *Superintendent of Lands and Surveys Sarawak v Aik Hoe & Co Ltd* [1966] 1 MLJ 243 at p 247 noted that 'the safest guide to determine the fair market value is evidence of sales of the same land and similar land in the neighbourhood, after making due allowance for all circumstances'.

[5] The respondent's valuer, Ms Haslinda used, as did the other objector's valuer and the assessors, the comparable sales method in which they analysed the sale of lands transacted in the vicinity of the subject land. She has taken the transactions of three of such land as comparables and opined that the best sale is that of sale No 2 ie a land just across the road from the subject land which was transacted in December 2004 at RM200,000 for an acreage of 0.5322 hectares. The land too was approved by state planning authority for eight units of dwelling houses on 30 November 2000. That works out to be RM75.15 per square metres but she has made an adjustment of minus 30% for the size and shape of the land (the said land is rectangular in shape whilst as stated earlier,

A the subject land is L-shape) but added 5% for time factor since that land was transacted about three and half years earlier than the acquisition date of the subject land.

B **[6]** The objector's valuer, Mr Chieng Yu Tang considered the sales transaction of also pieces of land in the vicinity of the subject land but they are much farther than that of the subject land though the transaction dates were much closer to that of acquisition of the subject land ie in 2006–2007 respectively. They were transacted at between RM65.49 per square metres to C RM80.89 per square metres, respectively. Thus he opined that the market value of the land should be RM69.19 per square metres.

[7] It is interesting to note that though Mr Khalid preferred the sale D comparables used by the objector's valuer in particular that of Lot 848 which was transacted in March 2007 at RM65.49 per square metres, in which a plus 10% adjustment was made for land area and a minus 5% for tenure since the title to that land is due to expire only on 8 May 2068 whereas Mr Alex Ting used a combination of the sales comparables from each of the valuer's reports E and giving them weighted quality scores, but both came to the same adjusted price of about RM69 per square metres for the subject land. It is a final analysis which I have no cause to disagree and as per the evidence adduced at the trial from the objector's valuer, since there was an existing planning approval for the subject land at the time of acquisition, the value should be 5% to 10% higher. F Again both assessors were in agreement and I concur with them that the market value of the subject land should be RM75 per square metres when the planning approval is factored into the market value earlier given by them, which is RM69 per square metres. At that value, the total compensation should be RM930,375 and the award of the respondent is to be revised to that amount. In addition, I G would also order that interest at 4%pa be payable on the difference in the amount of compensation from the date of possession of the land ie 5 July 2010 to the date of full payment. This is in line with s 69 of the Land Code.

H OTHER CLAIMS

[8] The objector has claimed an additional amount of RM11,111.60 being fees and expenses in relation to the approval for AVTC/subdivision of land. There is also a claim for RM250,000 being the compensation paid to the I developer who signed the agreement with the objector's husband to develop the land into a housing estate. Under cl 19 of the agreement, at p 31 of the objectors bundle of documents marked as O1 at the trial, the objector's husband agreed to pay the developer RM500,000 in the event of a premature termination or non-observance of it.

MATTERS FOR CONSIDERATION

[9] Section 60 of the Land Code provides for matters which the court shall take into consideration in determining the compensation payable for acquisition of land by the government and no others. These matters are spelled out in sub-s (1)(a)–(f) and are reproduced below:

> (a) the market value at the date of the publication of the notification under section 47 or, if no such notification has been published, the market value at the date of the posting of the declaration made under section 48;
>
> (b) any increase in the value of the other land of the person interested likely to accrue from the use to which the land resumed will be put;
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> (c) the damage, if any, sustained by the person interested, at the time of the Superintendent's taking possession of the land, by reason of severing such land from his other land;
>
> (d) the damage, if any, sustained by the person interested, at the time of the Superintendent's taking possession of the land, by reason of the resumption injuriously affecting his other property, whether movable or immovable, in any other manner or his actual earnings;
>
> (e) if in consequence of the resumption he is compelled to change his residence or place of business, the reasonable expenses, if any incidental to such change, and;
>
> (f) any improvements to the land made with the prior consent of the Superintendent after the publication of the notification under section 47 (1) or the posting of the declaration under section 48 (2), whichever is the date in respect of which the market value is taken in accordance with the provisions of paragraph (a).

[10] I am therefore tied by the legal provision not to consider any other matters except the above and when I examined the fees, expenses and compensation mentioned earlier, I find myself unable to pigeon-holed them into any of the provisions listed in the said sub-s (a)–(f).

[11] For the record, the state planning authority's planning approval which I had taken into account to increase the award of compensation earlier is different as it comes under s 60(1)(a) ie the approval has been proved and logically so, to have a positive effect on the market value of the land.

[12] However, assuming I was wrong in coming to the above conclusion on the fees, expenses and compensation to the developer, I would still not allow the compensation to the developer for the reason that evidence of the payment is not adduced at the trial. What is more, I attach very little weight to the development agreement exhibited at the trial because it was not even prepared

by a lawyer even though the terms are so professionally worded. It is stated at the bottom of its last page ie p 13 as 'Instrument Prepared by Both Parties'. With respect, for a development agreement of a housing estate to be drafted by the parties themselves is quite unbelievable and as I have mentioned earlier, the absence of the receipt of payment is even more damaging to their claim for the compensation.

[13] If at all the claim for compensation is to be allowed, it has to be only in relation to the professional services rendered by DL Toh Architect respecting the submission of the planning approval to state planning authority as it is not disputed and there is evidence from the letters from lands and surveys department (at pp 15–20 of OW1) that they were the party responsible for the same.

[14] Thus, if at all the other claims can be considered, I would only allow the payment of RM1,086 as evidenced by the receipt of payment at p 73 of OW1, the approval fee of RM580 at p 21 of OW1 but not the surveyors fee of RM1,700 because p 36–38 of OW1 is only an invoice and I am not convinced that the notation at the top right hand corner is evidenced of a cheque payment for that amount. The cost of engaging the valuer being part of the cost of the trial cannot be allowed under s 67(a)(c) of the Land Code.

[15] As for cost of action, since the award has been increased by more than 20%, under s 67(c) of the Land Code cost is not awarded to the applicant. The assessors are to be paid RM100 for each day of their attendance in court and to be borne by the objector and the respondent equally.

Order accordingly.

Reported by Kanesh Sundrum